

E-filing

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT L. WILLIAMS,

Plaintiff(s),

vs.

CITY OF HAYWARD, et al.,

Defendant(s).

No. C 11-1721 CRB (PR)

ORDER OF DISMISSAL WITH
LEAVE TO AMEND

(Docket # 6)

While plaintiff was detained at the Santa Clara County Jail, he filed a pro se complaint under 42 U.S.C. § 1983 alleging two unlawful investigatory stops by Hayward Police officers. Plaintiff seeks damages and leave to proceed in forma pauperis.

Based solely on his affidavit of poverty, plaintiff's motion for leave to proceed in forma pauperis (docket # 6) is GRANTED.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
2 elements: (1) that a right secured by the Constitution or laws of the United States
3 was violated, and (2) that the alleged violation was committed by a person acting
4 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

5 B. Legal Claims

6 A police officer may seize a citizen for a brief investigatory stop if the
7 officer "has reason to believe that he is dealing with an armed and dangerous
8 individual, regardless of whether he has probable cause to arrest the individual
9 for a crime." Terry v. Ohio, 392 U.S. 1, 27 (1968). And in addition to preventing
10 ongoing or imminent crime, police may effectuate a Terry stop "if they have a
11 reasonable suspicion grounded in specific and articulable facts, that a person they
12 encounter was involved in or is wanted in connection with a completed felony."
13 United States v. Hensley, 469 U.S. 221, 229 (1985). Unlike an arrest, which
14 must be supported by probable cause, Terry stops are constitutionally permissible
15 if the officer has a "reasonable suspicion" that the person detained is engaged in
16 criminal activity. Bingham v. Schreiber, 341 F.3d 939, 946-47 (9th Cir. 2003).

17 Liberally construed, plaintiff's allegations of investigatory stops without
18 justification appear to state a cognizable § 1983 claim for violation of the Fourth
19 Amendment. But in order to proceed with a § 1983 claim for damages, plaintiff
20 must name individual police officers and link them to his allegations of
21 wrongdoing. It is not enough to name the City of Hayward and the police
22 department because it is well established that a city or county may not be held
23 vicariously liable for the unconstitutional acts of its employees under the theory
24 of respondeat superior. See Board of Cty. Comm'rs. of Bryan Cty. v. Brown, 520
25 U.S. 397, 403 (1997). To impose municipal liability under § 1983 for a violation
26 of constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a
27
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1 constitutional right of which he or she was deprived; (2) that the municipality had
2 a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's
3 constitutional rights; and (4) that the policy is the moving force behind the
4 constitutional violation. See Plumeau v. School Dist. #40 County of Yamhill,
5 130 F.3d 432, 438 (9th Cir. 1997).

6 Plaintiff's allegations of wrongful towing and the like are dismissed
7 without leave to amend because, although regrettable, they amount to no more
8 than negligence not cognizable under § 1983. See County of Sacramento v.
9 Lewis, 523 U.S. 833, 849 (1998) (liability for negligently inflicted harm is
10 categorically beneath threshold of constitutional due process). So are his
11 allegations of harassment. See Rutledge v. Arizona Bd. of Regents, 660 F.2d
12 1345, 1353 (9th Cir. 1981) (mere harassment not cognizable under § 1983).

13 CONCLUSION

14 For the foregoing reasons, the complaint is dismissed with leave to amend,
15 as indicated above, within 30 days of this order. The pleading must be simple
16 and concise and must include the caption and civil case number used in this order
17 and the words FIRST AMENDED COMPLAINT on the first page. Failure to
18 file a proper amended complaint within the designated time will result in the
19 dismissal of this action.

20 Plaintiff is advised that the amended complaint will supersede the original
21 complaint and all other pleadings. Claims and defendants not included in the
22 amended complaint will not be considered by the court. See King v. Atiyeh, 814
23 F.2d 565, 567 (9th Cir. 1987).

24 SO ORDERED.

25 DATED: Aug. 9, 2011


26 CHARLES R. BREYER
27 United States District Judge

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ROBERT L. WILLIAMS,

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v.

HAYWARD CITY OF, et al,

Defendant.

Case Number: CV11-01721 CRB

CERTIFICATE OF SERVICE

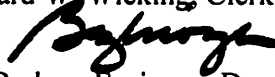
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 11, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert L. Williams
P.O. Box 4094
Hayward, CA 94540

Dated: August 11, 2011

Richard W. Wieking, Clerk



By: Barbara Espinoza, Deputy Clerk